

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison  
Company (U 338-E) for Authority to Lease  
Available Land on the San Onofre-Santiago  
Transmission Right of Way to Barranca Business  
Center, LLC.

Application 03-05-016  
(Filed May 6, 2003)

**DECISION GRANTING APPROVAL  
UNDER PUBLIC UTILITIES CODE SECTION 851  
FOR A LEASE OF UTILITY PROPERTY**

We grant the Application of Southern California Edison Company (SCE) for authority to lease available land under Pub. Util. Code § 851.<sup>1</sup> The SCE property consists of 0.88 acre site located on a portion of SCE's San Onofre-Santiago transmission right of way in the City of Irvine (Site). The Site is part of the San Onofre-Santiago 220-kilovolt (kv) system and includes, among others, Commission jurisdictional facilities. The lease is sought to permit Barranca Business Center, LLC (BBC or Lessee) to develop and operate an industrial office building on the Site.

**Background**

The Site is subject to an Option Agreement (Option) between SCE and BBC dated April 1, 2002. Under the terms of the Option, upon approval by the Commission, SCE and BBC will enter into a lease of the Site (Lease). Pursuant to

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<sup>1</sup> All statutory references are to the Public Utilities Code unless noted otherwise.

the Lease, BBC will lease the Site from SCE for development and operation of an industrial office building for an initial term of 40 years, with two additional 10-year renewal terms. The annual base rent rises throughout the initial term of the lease as follows:

Year 1	\$ 30,000
Years 2-5	\$ 55,000
Years 6-10	\$ 60,500

Base rent will increase by ten percent (10%) every fifth (5<sup>th</sup>) year of the lease term, commencing in Year 11. Base rent will be further adjusted upon the exercise of each renewal option to the then-current fair rental value of the Site, excluding the value of BBC's improvements. In no event, however, will adjusted base rent be less than base rent otherwise payable immediately prior to such adjustment, or increase more than ten percent (10 %).

The Lease provides that BBC's activities must not interfere with the operation of the electric facilities that surround the Site. To that end, BBC is forbidden to use or store hazardous substances, explosives or flammable materials on the Site. Further, any equipment used by BBC on or adjacent to the Site must maintain at all times a clearance of at least seventeen (17) feet from all overhead electrical conductors. BBC must maintain a minimum radius of fifty (50) feet around all tower legs and ten (10) feet around all poles and anchors and provide access roads to the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle.

SCE retains various rights under the Lease including the rights to:

- Enter the Site at any and all reasonable times to inspect the property;

- Impose temporary restrictions on BBC's right to enter, occupy, and use the Site in order to perform necessary work on the electrical facilities located on the Site; and
- Take back all or part of the leasehold by eminent domain or inverse condemnation.

BBC is also required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the Site or the improvements to be constructed thereon;
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the Site;
- Maintain appropriate comprehensive general liability, auto liability, and worker's compensation insurance; and
- Indemnify SCE against all liability for damages or injury to persons on the Site except to the extent caused by SCE's negligent or willful misconduct.

### **The Application**

On May 6, 2003, SCE filed its application, seeking authorization from the Commission to enter into the lease with BBC. SCE's application is made under § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public.<sup>2</sup> Leasing real

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<sup>2</sup> Section 851 reads:

No public utility other than a common carrier by railroad subject to Part I of the Interstate Commerce Act (Title 49, U.S.C.) shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or

*Footnote continued on next page*

property on which transmission towers and lines are located is therefore one of the enumerated activities that require approval under § 851.<sup>3</sup>

### **Determination of Best Secondary Use**

The primary use of facilities located on the Site is the transmission and distribution of electricity in the City of Irvine (City). Although the Site itself does not contain any overhead lines, associated restrictions limit the potential

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useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. The permission and approval of the commission to the exercise of a franchise or permit under Article 1 (commencing with Section 1001) of Chapter 5 of this part, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this article shall not revive or validate any lapsed or invalid franchise or permit, or enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or waive any forfeiture. Nothing in this section shall prevent the sale, lease, encumbrance or other disposition by any public utility of property which is not necessary or useful in the performance of its duties to the public, and any disposition of property by a public utility shall be conclusively presumed to be of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser, lessee or encumbrancer dealing with such property in good faith for value; provided, however, that nothing in this section shall apply to the interchange of equipment in the regular course of transportation between connecting common carriers.

<sup>3</sup> As the Commission previously stated: “The language of Section 851 is expansive, and we conclude that it makes sense to read “encumber” in this statute as embracing the broader sense of placing a physical burden, which affects the physical condition of the property, on the utility’s plant, system, or property.” (Decision (D.) 92-07-007, 45 CPUC2d 24, 29.)

secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that the BBC project offers the highest potential revenue. To evaluate the rental value for the Site, SCE conducted a study to determine the value of industrial/office land in the Irvine area. The land sales data for analysis was procured from Costar, an Internet based real estate property information provider, and from a database of property sales transactions recorded in Orange County. A rental range was calculated by applying a percentage rate of return to the industrial/office land values that were collected through the land sales study. The annual base rent SCE will receive from BBC falls within the acceptable market range established by the analysis of comparable facilities and is in line with revenues SCE will receive from similar transactions that we have approved in the past.

**Developer Selection**

SCE states that it entered into the Agreement with BBC because of the economic benefits to SCE ratepayers. SCE chose BBC as its developer because of the proposed use and the background and financial position of the company's principal members, Michael W. Rolfes and Barry M. Adnams. Mr. Rolfes is the CEO of CCA Associates, Inc. (CCA), a fully integrated design/build company; Mr. Adnams heads CCA's design and entitlement operations. CCA has participated in the development of nearly 2,000,000 square feet of commercial real estate in Southern California. The industrial office building to be developed on the Site will also serve as the new corporate headquarters for CCA.

**Environmental Review**

Because the California Environmental Quality Act (CEQA) applies to discretionary projects to be carried out or approved by public agencies and

because the Commission must act on the § 851 application and issue a discretionary decision without which the project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051(b)).

In this case, the City is the Lead Agency. The California Public Utilities Commission (CPUC) is a Responsible Agency for this proposed project. CEQA requires that the CPUC consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project. (CEQA Guidelines Section 15050(b).) The specific activities that must be conducted by a Responsible Agency are contained in CEQA guidelines Section 15096.

The City's Community Development Department (CDC) conducted an initial study to evaluate the environmental impact of the BBC project, which required General Plan Amendment 003239-2-PGA and Zone Change 00325049-PCZ. The general plan was amended to change the land use designation from Recreation to Research & Industrial. The zone change increased the building intensity limit in Planning Area 13 by 11,500 square feet. Based upon the environmental findings in its initial study, the CDC prepared a Mitigated Negative Declaration (MND) and approved General Plan Amendment 00323802-PGA. On January 14, 2003, the City Council, pursuant to City Council Ordinance No. 03-01, affirmed the adoption of the Mitigated Negative Declaration and approved Zone Change 00324049-PZC for the BBC project. In compliance with Public Resources Code Sections 21108 or 21152, a Notice of

Determination (NOD) approving the BBC project was filed with the County of Orange on December 11, 2002.

The Mitigated Negative Declaration found that although the BBC project could have a significant effect on the environment, there will not be a significant effect in this case. Revisions to the project made or agreed to by the applicant, would avoid or mitigate the effects to less than significant levels. In particular, potential environmental impacts were identified in the areas of cultural resources, geology and noise. Cultural resource impacts involved potential substantial adverse change in the significance of an archeological resource and potential direct or indirect destruction of a unique paleontological resource/site or unique geological feature. To avoid or mitigate these impacts the applicant agreed that prior to grading or excavation, a qualified archaeologist or paleontologist will be retained and on site, who will work with Community Development staff to specify procedures for resource surveillance. Upon any discovery of resources, work in the project area will stop until the resources are adequately protected.

Geology impacts involved potential soil erosion or loss of topsoil and impacts from potential seismic ground shaking. To avoid or mitigate these impacts a site-specific geotechnical study will be performed to evaluate potential hazards and identify mitigations.

Noise impacts involved a substantial temporary increase in ambient noise levels and exposure of persons to or generation of noise levels in excess of applicable local standards. To avoid or mitigate these impacts, a final acoustical report must be approved by the Director of Community Development and applicant shall work with the City to develop a construction truck traffic routing

plan to avoid residential and hospital areas and/or limit the hours of construction work.

With respect to the potentially significant environmental impacts we find that the City adopted reasonable and feasible mitigation measures to reduce the impacts to less than significant levels. Accordingly, we adopt the City's findings and mitigation measures for purposes of our approval.

### **Revenue Treatment**

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The sharing mechanism applies to OOR, except for revenues that (1) derive from tariffs, fee or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The Lease is "passive " for sharing purposes.<sup>4</sup>

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<sup>4</sup> See Attachment B to SCE's Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Facilities and Substations* as categories of non-tariffed products and services. Advice

*Footnote continued on next page*



**Discussion**

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of § 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The basic task of the Commission in a § 851 proceeding is to determine whether the transaction serves the public interest: “The public interest is served when utility property is used for other productive purposes without interfering with the utility’s operation or affecting service to utility customers.” (D.02-01-058 (2002).) We have reviewed the proposed agreement and find it does not interfere with SCE’s operation or affect its ability to provide service to its customers. Because ratepayers will receive 30% of the gross revenue from the transaction without incurring any measurable increased costs, we find that the property is being “used for other productive purposes” and accordingly the proposed Lease is in the public interest and the Application should be approved.

**Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

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Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

**Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. In order for BBC to develop and operate an industrial office building on the Site, a lease from SCE is required.
2. Lease of the Site to BBC is consistent with the current uses of the related SCE properties.
3. The Lease will not impair SCE's ability to provide service to the public.
4. The City of Irvine is the lead agency for environmental review under CEQA.
5. The Commission is a responsible agency for environmental review under CEQA.
6. The Commission has reviewed the City Council Resolution, General Plan Amendment, Zone Change, Mitigated Negative Declaration and Notice of Determination, and finds these documents adequate for our decision-making purposes.
7. The BBC project received environmental review from the City.
8. All revenue from the Lease in excess of a Commission-established threshold will be treated as OOR and shared 70/30 between SCE and its ratepayers, pursuant to D.99-09-070.
9. There is no known opposition to granting the authorization requested.

**Conclusions of Law**

1. Approving the requested Lease is in the public interest.
2. With respect to the potentially significant environmental impacts resulting from the project, we find that the City adopted reasonable and feasible

mitigation measures to reduce the impacts to less than significant levels. We adopt the City's findings and required mitigation measures for purposes of our approval.

3. This decision should be effective today in order to allow BBC to expeditiously enter into the Lease with SCE.

**O R D E R**

**IT IS ORDERED** that:

1. Southern California Edison Company's Application for authority to lease a portion of its San Onofre-Santiago Transmission Right of Way to BBC Land Company is granted, as described above.

2. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.